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YOUR BABY CAN, LLC

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 F. BETH GASNER, on Behalf of  
12 Herself and All Others Similarly  
Situated,

13 Plaintiff,

14 vs.

15 YOUR BABY CAN, LLC, ROBERT  
16 TITZER, Ph.D.,

17 Defendants.  
18

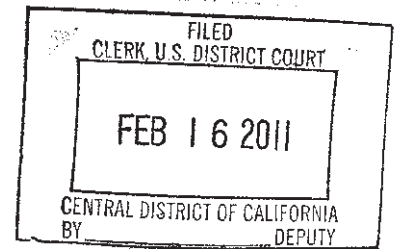
No. **CV11-01434** CAS(MANX)

**NOTICE OF REMOVAL OF CIVIL  
ACTION TO UNITED STATES  
DISTRICT COURT UNDER 28  
U.S.C. §§ 1441 AND 1446**

[Filed concurrently with:  
(1) Certification and Notice of  
Interested Parties;  
(2) Civil Case Cover Sheet;  
(3) Notice to Adverse Parties]

19 Defendant Your Baby Can, LLC ("YBC") hereby gives notice that it is  
20 removing the captioned case, originally filed in the Superior Court of the State of  
21 California for Los Angeles County, Case No. BC452137, to the United States  
22 District Court for the Central District of California. YBC removes the case  
23 pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, on the grounds set forth below.

24 1. On December 29, 2010, plaintiff F. Beth Gasner ("Gasner"), acting  
25 individually and on behalf of a putative class of supposedly similarly situated  
26 persons she seeks to represent, filed this action in Los Angeles County Superior  
27 Court.  
28



2. On or about February 7, 2011, service of the summons and complaint was effected on Defendant Your Baby Can, LLC ("YBC") through the execution by YBC's counsel of a Notice and Acknowledgment of Receipt pursuant to Section 415.30 of the California Code of Civil Procedure. Removal of this action is therefore timely, in that YBC has filed the notice of removal within 30 days of service of the summons and complaint. *See* 28 U.S.C. § 1446(b). The undersigned counsel of record certifies that Defendant Robert Titzer, Ph.D. ("Titzer") consents to the removal of this action.

3. According to the docket for the Los Angeles County Superior Court for this action, the complaint, civil case cover sheet, notice of related case, notice of case management conference, Order to Show Cause for Failure to File Proof of Service, and answers of YBC and Titzer constitute all process, pleadings, papers and orders filed in Los Angeles County Superior Court in this action within the meaning of 28 U.S.C. § 1446(a). Copies of those documents received by YBC are attached hereto as Exhibit A.

4. The removal of this action terminates all proceedings in Los Angeles County Superior Court. *See* 28 U.S.C. § 1446(d).

5. YBC removes this action pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. 1332(d), and 28 U.S.C. § 1453, on the grounds that (a) this action is a proposed “class action” as defined in 28 U.S.C. § 1332(d)(1)(B); (b) Plaintiff seeks to represent a putative class of consumers throughout the United States, including residents of states other than the State of California, which Plaintiff alleges consists of hundreds of thousands of persons, and (c) the alleged amount in controversy exceeds \$5,000,000, exclusive of interest and attorneys’ fees.

## Proposed Class Action

6. Plaintiff alleges that this case is brought as a class action. Plaintiff seeks to certify a class that consists of all persons who purchased the Your Baby

1 Can Read! Early Language Development System ("YBCR") from December 2006  
 2 through the date on which notice of this action is provided to potential class  
 3 members. Complaint, ¶ 43 (Ex. A). Plaintiff alleges that approximately one  
 4 million consumers have purchased YBCR, and "thousands of purchasers [of  
 5 YBCR] exist . . . ." Complaint, ¶¶ 5, 45. Plaintiff seeks an award of injunctive  
 6 relief in favor of Plaintiff and the other "Class" members, as well as the return of all  
 7 amounts paid by these persons for YBCR. Complaint, ¶¶ 61, 73, 79, 87, 93, 97, B-  
 8 F. Therefore, this action is a proposed "class action" under 28 U.S.C.  
 9 § 1332(d)(1)(B), defined as "any civil action filed under Rule 23 of the Federal  
 10 Rules of Civil Procedure or similar State statute or rule of judicial procedure  
 11 authorizing an action to be brought by 1 or more representative persons as a class  
 12 action." In accordance with 28 U.S.C. § 1332(d)(5)(B), the number of members of  
 13 the proposed plaintiff class in the aggregate is more than 100, based on the  
 14 allegations in the Complaint.

### 15 Minimal Diversity

16 7. Under 28 U.S.C. § 1332(d)(2)(A), a district court may assert  
 17 jurisdiction over a class action in which "any member of a class of plaintiffs is a  
 18 citizen of a State different from any defendant." Such minimal diversity exists  
 19 among the parties in this case. Plaintiff alleges that she is a citizen of the State of  
 20 New York, and YBC and Titzer are citizens of the State of California. Complaint  
 21 ¶¶ 12-14. Plaintiff also alleges that Defendants marketed YBCR through its  
 22 website and a "ubiquitous marketing campaign consisting of persuasive television  
 23 and radio infomercials and public appearances by defendant Dr. Titzer."  
 24 Complaint ¶¶ 2, 19, 25-27. Furthermore, Plaintiff alleges YBC "markets,  
 25 advertises, and sells its Can Read Systems to parents and other consumers  
 26 nationwide." *Id.* at ¶ 13. Plaintiff seeks to represent a class that consists of "all  
 27 individuals who purchased or acquired any of the Can Ready Systems from  
 28 December 2006 through the date on which notice of this action is provided to

1 [proposed] Class Members ” (*id.*, ¶ 43), which necessarily includes persons  
2 throughout the United States in light of Plaintiff’s allegation regarding Defendants’  
3 nationwide marketing of YBCR. In addition, Plaintiff alleges that the proposed  
4 “Class” is “geographically dispersed.” Complaint, ¶ 45. Because at least one  
5 member of the proposed “Class” is a citizen of a State different from Defendants,  
6 there is sufficient diversity among the parties to satisfy the requirement of minimal  
7 diversity under 28 U.S.C. § 1332(d)(2)(A).

#### 8 Amount in Controversy

9 8. This is an “action in which the matter in controversy exceeds the sum  
10 or value of \$5,000,000.” 28 U.S.C. § 1332(d)(2). “In any class action, the claims  
11 of the individual class members shall be aggregated to determine whether the  
12 matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest  
13 and costs.” 28 U.S.C. § 1332(d)(6).

14 9. Plaintiff seeks an order compelling Defendant to return all amounts  
15 paid to it by consumers of YBCR. Complaint ¶ 61. Plaintiff alleges that the  
16 purchase price for YBCR ranges from \$99.95 to \$214.90 per product. *Id.* ¶ 16.  
17 Plaintiff also alleges that Defendants have generated \$90 million in annual revenue  
18 in connection with the sale of Your Baby Can Read! products. *Id.* ¶ 5. Based on  
19 the allegations in the Complaint, this case easily meets the \$5 million amount in  
20 controversy threshold for CAFA jurisdiction. YBC denies the allegations in the  
21 Complaint, and denies that Plaintiff or any putative class will be able to recover any  
22 damages or restitution. But Plaintiff’s allegations establish that she seeks to  
23 recover more than \$5 million in restitution.

24 10. Plaintiff also seeks injunctive relief in the form of an order enjoining  
25 Defendants from continuing to sell YBCR and pursuing the policies, acts and  
26 practices alleged in the Complaint, as well as requiring Defendants to undertake a  
27 “corrective advertising campaign.” Complaint, ¶¶ B, C. The value of the  
28 injunctive relief sought must also be considered in determining the amount in

1 controversy. *Cohn v. Petsmart, Inc.*, 281 F.3d 837, (9th Cir. 2002) (the court solely  
2 looked to the value of the injunctive relief sought to determine the amount in  
3 controversy in affirming removal).

4 11. In sum, the alleged aggregated monetary relief, injunctive relief and  
5 fees that Plaintiff seeks exceed the \$5,000,000 amount in controversy required to  
6 establish federal jurisdiction under CAFA.

7 **Removal is Proper**

8 12. Pursuant to 28 U.S.C. § 1453, a suit over which a district court would  
9 have original jurisdiction under CAFA may be removed to federal court from state  
10 court, as provided by 28 U.S.C. § 1441(a). Therefore, YBC is entitled to remove  
11 the instant action to this Court, because the Court could have asserted original  
12 jurisdiction over the case.

13 13. Los Angeles County Superior Court lies within the Central District of  
14 California. Accordingly, removal to this district is proper. *See* 28 U.S.C.  
15 § 1441(a).

16 14. Written notice of the filing of this Notice of Removal and the removal  
17 of the state court action is being delivered to Plaintiff through her counsel of record.  
18 A copy of this Notice of Removal will be filed promptly with the Clerk of the Los  
19 Angeles County Superior Court, as required by 28 U.S.C. § 1446(d). YBC attaches  
20 as Exhibit B to this Notice a copy of the notice to be filed with the state court  
21 (absent its exhibits).

22 15. Plaintiff alleges that the parties “submit to the jurisdiction of [Los  
23 Angeles County Superior Court]” based on a forum selection clause on YBC’s  
24 website, which applies to any action to “enforce or interpret” the website’s terms  
25 and conditions. Complaint ¶ 8 and Exh. 9. Contrary to Plaintiff’s allegations, this  
26 narrow forum selection clause does not apply to this action and, therefore, does not  
27 preclude removal of the action to this Court. First, Plaintiff’s claims arise out of the  
28 central allegation that YBC’s advertising and marketing claims are false and



1 misleading (Complaint ¶¶ 1-7), and such claims have nothing to do with the  
2 enforcement or interpretation of the YBC website's terms and conditions.  
3 Accordingly, the forum selection clause set forth in the terms and conditions is  
4 inapplicable to this action. Second, on information and belief, Plaintiff purchased  
5 YBCR at a retail store, not through the YBC website. Plaintiff does not allege that  
6 she has ever even seen, much less agreed to be bound by, the website's terms and  
7 conditions. Plaintiff cannot seek to enforce the terms of a contract to which  
8 Plaintiff has never assented.

9 WHEREFORE, YBC respectfully gives notice that the above-entitled action  
10 is removed from the Los Angeles County Superior Court to the United States  
11 District Court for the Central District of California.

12 Dated: February 16, 2011

13 MANATT, PHELPS & PHILLIPS, LLP  
14 BRAD W. SEILING  
15 CHAD S. HUMMEL  
16 ERIN C. WITKOW

17 By: 

18 Erin C. Witkow  
19 *Attorneys for Defendant*  
20 YOUR BABY CAN, LLC

21 300213106.1  
22  
23  
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25  
26  
27  
28

# EXHIBIT A

ORIGINAL

# SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):

Your Baby Can, LLC and Robert Titzer, Ph.D.

YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

F. Beth Gasner, on Behalf of Herself and All Others Similarly  
Situating

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)  
**FILED**  
Los Angeles Superior Court

DEC 29 2010

JOHN A. CLARKE, CLERK

BY DAWN ALEXANDER, DEPUTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, pueda perder el caso por incumplimiento y la corte lo podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, pueda llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of Los Angeles  
Stanley Mosk Courthouse

111 North Hill St., Los Angeles, CA 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Rachel L. Jensen, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900,  
San Diego, CA 92101; ph. 619/231-1058

DATE:

(Fecha) December 29, 2010

JOHN A. CLARKE

Clerk, by

(Secretario)

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010))



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)



U.S. District Court  
Southern District of New York

OFFICE OF THE CLERK

U.S. District Court

U.S. District Court

U.S. District Court

U.S. District Court

U.S. District Court



COPY

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11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF LOS ANGELES

14 F. BETH GASNER, On Behalf of Herself and  
15 All Others Similarly Situated,

16 Plaintiff,

17 vs.

18 YOUR BABY CAN, LLC and ROBERT  
19 ITTZER, Ph.D.,

20 Defendants.

CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

DEC 29 2010

John A. Clarke, Executive Officer/Clerk

By Dawn Alexander Deputy  
DAWN ALEXANDER

Case No. **BC468187**  
CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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CLASS ACTION COMPLAINT

1 Plaintiff F. Beth Gasner ("plaintiff"), by her undersigned attorneys, Robbins Geller Rudman &  
 2 Dowd LLP, on behalf of herself and the Class (defined below), brings this action against defendant  
 3 Your Baby Can, LLC ("Your Baby") and defendant Dr. Robert C. Titzer, Ph.D. ("Dr. Titzer")  
 4 (collectively, "defendants") for compensatory damages and equitable, injunctive, and declaratory relief  
 5 against defendants. Plaintiff alleges the following upon information and belief, formed after an inquiry  
 6 reasonable under the circumstances, except as to those allegations which pertain to the named plaintiff  
 7 (which are alleged on personal knowledge), as follows:

#### 8 NATURE OF THE ACTION

9 1. This action is brought on behalf of parents and other consumers who purchased infant  
 10 and toddler educational products based on defendants' false representations concerning the efficacy of  
 11 the Your Baby Can Read! products (the "Can Read System" (defined below) and "Predecessor Can  
 12 Read System" (defined below), collectively the "Can Read Systems") during the Class Period (defined  
 13 below). Specifically, defendants falsely represented to consumers that, *inter alia*, the Can Read  
 14 Systems could teach infants and children how to read at an extraordinarily young age. Defendants  
 15 further misrepresented that scientific trials were conducted to prove defendants' outlandish assertions.  
 16 In fact, the exact opposite was true, as many scientists and experts concluded that the Can Read  
 17 Systems were ineffective and worthless.

18 2. Despite knowing that their products could not teach infants how to read, defendants  
 19 conducted a ubiquitous marketing campaign consisting of persuasive television and radio infomercials  
 20 and public appearances by defendant Dr. Titzer. In furtherance of their scheme, defendants knowingly  
 21 and/or recklessly disseminated the following false and misleading claims to vulnerable parents,  
 22 grandparents and other educators about the Can Read Systems:

- 23 (a) that the products can teach a three month old baby to read by nine months old;
- 24 (b) that the products can enable a five year old to read junior high school level  
 25 books;
- 26 (c) that the products can teach infants suffering from Down's syndrome how to read;
- 27 (d) that the products can teach an infant how to read at an early age and that this  
 28 would prevent learning disabilities, including dyslexia; and

1 (e) that studies performed by the scientific community support the use of the Can  
2 Read Systems.

3 3. Defendants further issued false and misleading statements about the Can Read Systems  
4 on its website, [www.yourbabycanread.com](http://www.yourbabycanread.com), claiming that the products are "a remarkable learning  
5 system which will have positive and permanent affects in your child's life," and that "with the Your  
6 Baby Can Read!...you'll get a complete set of tools to unlock your child's reading potential."<sup>1</sup>

7 4. As alleged herein, scientific evidence does not support defendants' contentions that the  
8 Can Read Systems can effectively develop an infant's ability to read. Scientific experts who have  
9 tested the claims made by defendants have concluded that infants using the products are not reading;  
10 rather, these infants are merely memorizing the shapes of the letters placed in front of them. According  
11 to these doctors and scientific experts, no evidence exists that the Can Read Systems' rote memorization  
12 process boosts an infant's ability to read and comprehend.

13 5. Defendants \$37 million false advertising campaign has persuaded approximately one  
14 million consumers (including more than 400,000 direct consumers, 100,000 retail customers and  
15 400,000 online consumers) to purchase their products. Defendants have reaped over \$90 million in  
16 annual revenues by unjustly preying on the susceptibility of parents who sought to offer their children a  
17 brighter future at a young age.

18 6. Despite defendants' actual knowledge of the inefficacy of their Can Read Systems,  
19 defendants have failed to, *inter alia*, inform plaintiff and the Class that their products cannot  
20 successfully teach an infant how to read. Defendants have also failed to inform the consuming public of  
21 the dearth of scientific studies or evidence supporting the effectiveness of the products. Finally,  
22 defendants have failed to recall the Can Read Systems and/or reimburse consumers the entire purchase  
23 price of these worthless products. Instead of accurately portraying their products to consumers,  
24 defendants continue to sell the Can Read Systems in stores, by phone order and on their website based  
25 upon false and misleading advertising.

26  
27 <sup>1</sup> Exhibit 1 (Dec. 28, 2010), <http://www.yourbabycanread.com>. All exhibits referenced herein are  
28 attached hereto.

7. This class action is brought against defendants for equitable (injunctive and/or declaratory) relief, breach of contract, unjust enrichment and violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* ("UCL"); the Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* ("CLRA"); the False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.* ("FAL" or "17500"); Breach of Contract; Negligent Misrepresentation; and Unjust Enrichment. Plaintiff seeks damages and equitable relief on behalf of the Class, which relief includes, but is not limited to, the following: full refunds for plaintiff and the Class; an order enjoining defendants from falsely marketing and advertising their products; costs and expenses, including attorneys' fees and expert fees; and any additional relief that this Court determines to be necessary or appropriate to provide complete relief to plaintiff and the Class.

#### JURISDICTION AND VENUE

8. Pursuant to C.C.P. § 410.10 and Cal. Bus. & Prof. Code §§ 17203 and 17204, defendants are subject to the jurisdiction of the court of the State of California by virtue of their extensive business dealings and transactions within this state. The misconduct alleged herein arose from and occurred in California. Defendants are headquartered in, conduct business and/or reside in California and have sufficient minimum contacts with California, or otherwise avail themselves of the consumer market in California, through the marketing, promotion, and sale of their Can Read Systems so as to render jurisdiction by the courts of California permissible and appropriate. Furthermore, the most recent Can Read Systems' terms and conditions states that the parties submit to the jurisdiction of this Court. The terms and conditions specifically state:

These Terms are governed by California laws. Any action to enforce or interpret them shall be brought and maintained exclusively in the Superior Court of the State of California in Los Angeles. The parties irrevocably submit to the jurisdiction of said court and waive all objections thereto and waive the right to remove such action to a Federal District Court.

9. The California Superior Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all cases except those given by statute to trial courts. The statute under which this action is brought does not grant jurisdiction to any other trial court.





1 published an article unrelated to child literacy in the journal *Psychological Review*. Dr. Titzer's other  
2 published materials are also unrelated to reading.

### 3 THE FACTS

4 15. Defendant, Your Baby was formed by defendant Dr. Titzer in August of 2007.

5 16. Many consumers have purchased the Can Read System distributed by defendants since  
6 August of 2007 (the "Can Read System") from defendants' website, [www.yourbabycanread.com](http://www.yourbabycanread.com), for  
7 \$199.95 (or \$214.90 if paid in installments), others have called defendants' 1-800 number and ordered  
8 the products via telephone. The Can Read System was also sold in stores for \$99.95 (which does not  
9 come with the deceptive 30 day money back "guarantee").

10 17. Prior to 2007, defendant Dr. Titzer created predecessor or related products to the Can  
11 Read System that incorporated the same multisensory approach (the "Predecessor Can Read System").  
12 The Predecessor Can Read System was created by defendant Dr. Titzer in his home, using his own two  
13 daughters as experimental subjects. Defendants made false and misleading representations regarding  
14 the Predecessor Can Read System in a similar fashion to the misrepresentations they made regarding the  
15 Can Read System.

16 18. In 2007, Dr. Titzer began marketing the Can Read System by inaccurately describing the  
17 scientific research surrounding infant reading.

18 19. According to Your Baby's website, the Can Read System provides the following:

#### 19 What You Get

20 Getting started is as easy as ABC. With the Your Baby Can Read! Deluxe Kit, you'll get  
21 a complete set of tools to unlock your child's reading potential.

#### 22 For your child:

23 •Your Baby Can Read! Complete 5-Level DVD Reading System. These fun,  
24 interactive videos will keep your baby reading and entertained!

25 •5 Sets of Sliding Words Cards. The read & play cards accompany each level and  
26 reinforce what your child has learned.

27 •5 Lift-a-Flap Books. The word and picture books accompany each level and introduce  
28 familiar words from the DVDs in a new format.

#### For you:

Baby's First Teacher Pack. Contains everything you need to help your child succeed!

1 •Parent's Guide. Gives easy step-by-step instructions to the Your Baby Can Read!  
Program.

2 •Early Learning Workshop DVD. Dr. Titzer shares his secrets for a fun, multi-sensory  
3 approach to early language development.

4 •Teaching Cards. 15 Fun Games with 83 double-sided Interactive Cards to play with  
your child!

5 See Exhibit 1.

6 20. The Can Read System states that it incorporates a multisensory technique to teach  
7 children how to read at a very young age. Dr. Titzer himself has briefly explained how this  
8 multisensory technique purportedly works -- since there is more neuroplasticity (the ability of the brain  
9 to change or modify based on the environment) early in life, it is possible that the brain will develop  
10 more efficiently for reading, so the child could read as naturally as the child understands spoken  
11 language.

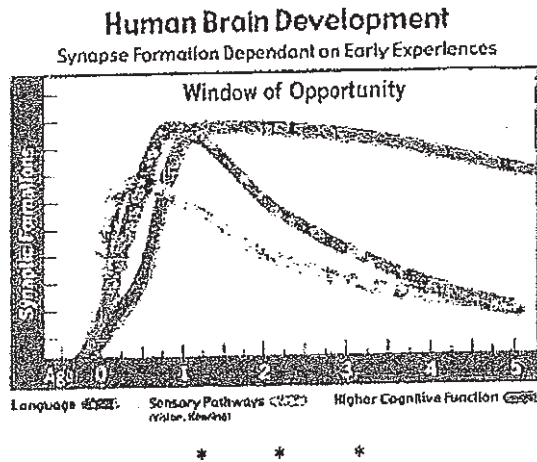
12 21. The Can Read System contains a thirty minute video for parents to watch with their  
13 children. The video visually introduces sixteen new words to children and parents are instructed to  
14 replay the same thirty minute video once or twice a day for a consecutive one to two month period.  
15 During that period, parents are instructed to review the same sixteen words with their children, on flash  
16 cards, and to read their children certain books that utilize the same sixteen words. At the conclusion of  
17 the one to two month period, parents are instructed to continue the cycle by beginning a new set of  
18 sixteen words that are featured in the next set of videos, flash cards and books.

19 22. BrillBaby.com editor Madeleine Fitzpatrick authored a booklet entitled "Everything You  
20 Need to Know To Teach Your Baby to Read," discussing the philosophy behind Dr. Titzer's  
21 multisensory method:

22 The multisensory method of teaching babies to read involves using books, DVDs,  
23 PowerPoint slideshows and/or computer software to illustrate the meanings of words  
24 through multiple sensory channels -- visual, auditory, and kinesthetic (including doing,  
touching, smelling and tasting).

25 Delivering information through several sensory channels is a powerful teaching method  
26 because it is easier to remember something we have experienced in a number of ways.  
27 Like the flash card method, this type of teaching engages the right hemisphere of the  
28 brain (albeit in a different way). Unlike the left brain, which learns through logic and  
reasoning, the right brain learns through feeling, doing, and visualizing (pictures rather  
than words). This is why young children who are right brain dominant until the age of  
three and a half -- instinctively try to touch and taste every object they come across.





Remember, your child has tens of thousands of new brain connections forming every second. While watching Your Baby Can Read!, those connections now have even more value. Over time, these billions of powerful connections give your child the tools for increased communication, enhanced learning and overall confidence giving them the edge they'll need for a better education and career success.

Exhibit 1 (video on website).

25. Despite knowing that their products could not teach infants how to read, defendants conducted a ubiquitous marketing campaign since the formation of Your Baby, consisting of television and radio infomercials and public appearances by defendant Dr. Titzer. In furtherance of their scheme, defendants knowingly and/or recklessly disseminated the following false and misleading claims to parents, grandparents and educators about the Can Read System, including, for example, the following:

- (a) that the products can teach a three month old baby to read by nine months old;
- (b) that the products can enable a five year old to read junior high school level books;
- (c) that the products can teach infants suffering from Down's syndrome how to read;
- (d) that the products can teach an infant how to read at an early age and that this would prevent learning disabilities, including dyslexia; and
- (e) that studies performed by the scientific community support the use of the products.

26. Defendants issued the following false and misleading statements about the Can Read System on its website:



1 This incredible program has truly changed the lives of thousands of parents and their  
 2 children. It demonstrates the importance of giving your child the tools early in life so  
 they can enjoy life long opportunities for success.

3 \* \* \*

#### 4 Benefits of Early Literacy

5 According to Your Baby Can Read! developer Dr. Robert Titzer, the current practice of  
 6 starting to teach reading in school is too late. When children develop reading skills  
 during their natural window of opportunity, from about birth to age four, they read  
 better and are more likely to enjoy it.

7 In fact, studies prove that the earlier a child learns to read, the better they perform in  
 8 school and later in life. Early readers have more self-esteem and are more likely to stay  
 in school. Meanwhile, a national panel of reading specialists and educators determined  
 9 that most of the nation's reading problems could be eliminated if children began reading  
 earlier.

10 \* \* \*

11 Getting started is as easy as ABC. With the Your Baby Can Read! Deluxe Kit, you'll  
 12 get a complete set of tools to unlock your child's reading potential.

13 \* \* \*

14 Baby's First Teacher Pack. Contains everything you need to help your child succeed!

15 Exhibit 1.

16 27. Plaintiff alleges, on information and belief, in its radio and television infomercials  
 17 defendants made the following misrepresentations about the effectiveness of the Can Read System:

18 Imagine your five year old reading junior high school level books. Imagine the head  
 19 start this child would have on life. Finally, imagine all of this happening naturally - with  
 smiles and laughter. And most importantly, with zero stress. Is this too amazing to be  
 20 true? Are you skeptical? Because what I am about to show you will absolutely astonish  
 you. Your baby can read.

21 \* \* \*

22 Imagine the head start that your child will have on life and happiness and their  
 23 education. As a parent sitting there listening to me, I can't imagine that you don't want  
 the best for your child. Your baby can read.

24 \* \* \*

25 If a child does not learn language skills, how to read until later in life, there are long  
 26 term studies showing that fewer than one in eight ever catch up to reading at grade level  
 again. There are also other studies showing that the earlier a child is taught to read the  
 better the child reads.

27 I can tell you this, teaching them to read early in life opens up the door for all types of  
 28 learning.

1 Literally can any child learn to read?

2 If you start early in life then any child should be able to learn written language, within  
3 reason, of course there are always going to be few children here and there with severe  
learning disabilities.

4 We have many examples of children who had learning disabilities or we have children  
5 with autism who have used our program. We have children with Down's syndrome who  
6 have used our program and some of the most touching letters that I've ever gotten were  
from parents where for instance an 18-year month old baby with Down's syndrome  
could read the words.

7 28. As alleged below, the statements regarding the efficacy of the Can Read System with  
8 respect to children with disabilities were particularly misleading.

9 29. In an interview with BabyBrill.com in 2009, defendant Dr. Titzer claimed the following:

10 For dyslexia, the most common reading disorder, a lot of the children do not look at  
11 words from left to right. The [Your Baby Can Read! DVDs] can help prevent that  
problem, because they're being taught, as babies, to look at words from left to right.

12 See Exhibit 3 and ¶¶22-23 above.

13 30. These representations about the multisensory method and the effectiveness of the Can  
14 Read System have been highly criticized by child development and behavioral scientists around the  
15 country. Indeed, defendants were unable to produce any scientific studies to support their boisterous  
16 claims when called to task on the nationally syndicated television program, The Today Show:

17 Dr. Titzer – We have a book full of studies that support the use of our program. It's  
literally thicker than this.

18 The Today Show – Can you provide us that research?

19 Dr. Titzer – Yes. Yes, I can.

20 The Today Show – Instead of published research on Your Baby Can Read!, he sent us  
21 this customer satisfaction survey conducted by his own company, along with general  
22 studies about child learning that experts we spoke to say he's twisting and taking out of  
context.

23 Exhibit 4 (Dec. 28, 2010), <http://today.msnbc.msn.com/id/39953918/ns/today-money>.

24 31. Doctors, scientists and reading experts have consistently criticized the Predecessor Can  
25 Read System and the Can Read System as being a complete farce and have criticized defendant Dr.  
26 Titzer as a greedy entrepreneur who is simply raising false expectations amongst parents.

27 32. Since as early as 1998, the scientific community has reacted with skepticism to the  
28 Predecessor Can Read System. On August 29, 1998, the Los Angeles Times published an article

entitled "TOO YOUNG TO READ?," which stated the following about the Predecessor Can Read System:

Robert Titzer didn't come to Orange County to be invisible.

Before starting his new teaching job at Cal State Fullerton on Wednesday the Ph.D. in human performance was standing in front of a crowd of parents at an Irvine baby store, touting his video "Your Baby Can Read." Copies were available on site, at \$ 13.99 a shot. Unlike most academics, he comes equipped with his own public relations man.

According to Titzer's teachings, infants as young as 9 months can read, as long as parents don't wait too long to start. Say, by about 3 or 4 months of age.

Titzer concedes that his main study for this theory, and for the book and video he sells via his Web site, is based on his own daughters, now 4 and 7. He has published academic papers in the field of human learning, but not about infant reading. And when challenged by the criticisms of other child-development experts who say babies cannot truly read, Titzer acknowledges that what the infants are doing is memorizing the images of a few words, which despite the title of his video cannot be called reading.

"Initially it's simple word recognition," he said, adding that it takes several months for babies to respond to the word images. But he defends its worth. "There is this window of opportunity for learning language and earlier is better."

Titzer's critics abound, but he also has supporters, who say that in some areas of child development he has done solid and important work. A number of fans also showed up at his Irvine talk, parents who like what he has to say and several who snapped up copies of his video.

"He's like a god," said Corinda Vasquez about Titzer. She was one of the parents at Babies R Us who had been using the video with her child. "He can't do any wrong in our eyes."

Her 14-month-old son, Tanner, has been watching the video for almost a year. "I hate to brag, but Tanner is so smart due to Dr. Titzer's teachings," she said.

The 30-minute video flashes more than 50 words in a sequence followed by a pictorial representation of the word. For example, the word "bellybutton" lingers on the screen, with a slow pronunciation, followed by footage of a child pointing to her bellybutton.

Tanner, after a year of watching Titzer's video, responds to all 50 words. "He needs to see more words in order to learn to read new words," said Titzer. "Now he can only read the words in the video. But that's still quite impressive."

Titzer, 38, said that when his daughter was 9 months old, before she could talk, she would recognize words. If he held up a placard with the word "mouth" on it, she'd open her mouth. "Reading is the most important skill that parents can teach their children," he said.

Titzer's academic credibility isn't questioned by his colleagues at Cal State Fullerton, says Roberta Rikli, chair of the college's division of kinesiology and health promotion, who hired Titzer.

1 "People are mostly quizzical about his work rather than critical," said Rikli. "They are  
2 waiting to see if it's for real."

3 Cal State Fullerton hired Titzer as a part-time adjunct faculty member, where he will be  
4 paid \$ 11,000 to teach and conduct research about infant reading to further his theory--  
5 and, critics say, his company profits.

6 "The lack of rigorous scientific review combined with the commercialization of the  
7 product leaves me a bit suspect," said Matthew Melmed, executive director of the Zero  
8 to Three Foundation in Washington D.C., an organization that conducts research on  
9 young childhood.

10 "Perhaps it impresses adults if a very young child can repeat words like an orangutan,  
11 but it doesn't promote their long term-brain power," he said.

12 Titzer rejects the notion that his work is any more commercial than what other  
13 academics do. Some professors write textbooks and require students to buy them, he  
14 said. "I'm not getting rich off this," he said, and parents can make their own videos or  
15 use flash cards.

16 Melmed's concern with Titzer's work is that parents may wind up teaching rote  
17 memory-based learning rather than cultivating thinking, thereby undermining a child's  
18 long-term progress.

19 Defending his video, Titzer says Melmed's claim that it won't lead to higher thinking  
20 skills is ridiculous.

21 "Babies gain by learning new words, and learning new words helps their thinking  
22 skills," he said.

23 Melmed advises parents to resist the hype of rearing an uber-baby. "Being able to read  
24 at a young age does not guarantee that a child is going to be successful later," he said.

25 Another child development expert questioned the use of videotapes to teach very young  
26 children.

27 "In the first two to three years of life, the best learning occurs in terms of human  
28 interaction, not in the form of videotapes," said Dr. Stanley Greenspan, clinical  
professor of psychiatry and pediatrics at George Washington University Medical School  
in Washington, D.C.

Titzer said he never meant for his video to replace human interaction. "Most parents  
don't have 24 hours a day to spend with their babies, unfortunately," he said. "This  
video can be valuable to stimulate brain development while the parents are busy doing  
other activities."

Concerns about his methodology and scope haven't kept Titzer's business, Infant  
Learning Company, from selling 9,000 copies of the tape via the Web site. He doesn't  
know how many have been sold via bookstores.

"I'm willing to do whatever it takes to help my child," said Carolyn Pinkney of Irvine,  
who attended Titzer's recent talk.

However, Pinkney is cautious about the benefits of Titzer's video, which she's been  
watching with her 11-month-old daughter, London.

1 "Some people say that you shouldn't push a child at this age," she said. "But I'm not  
2 going to lock her up, tie her to a chair and make her watch the video."

3 Titzer moved to California this month after working for two years in a tenure-track job  
4 at Southeastern Louisiana University. He has a PhD from Indiana University and a  
5 master's degree from Pennsylvania State University. Betty Baker, who hired Titzer at  
6 Southeastern Louisiana University, said that while it might be too early for him to draw  
7 conclusions in his work on infant reading, she believes he will "have a reputable amount  
8 of subjects and data" at some point.

9 His work on infant memory will be published this year by the Psychological Review in  
10 Los Angeles.

11 According to Robert Bjork, professor at UCLA and editor of Psychological Review, the  
12 paper is an "ambitious theory" designed to account for errors that infants make in search  
13 tasks. Bjork said he can't speak to Titzer's work on infant reading, which this paper  
14 does not address, but that the paper is "a major theoretical contribution."

15 But Bjork also expressed concerns about Titzer's claims of teaching infants to read,  
16 saying anxious and ambitious parents are easy prey for the latest educational fad.  
17 "Parents are very concerned, so they can be susceptible to these kind of claims," he said.

18 Exhibit 5.

19 33. On April 2, 2000, the Plain Dealer (Cleveland, Ohio) published an article entitled  
20 "Experts Doubt Brain-Boosting Claims for Products, But Sales Soar," which stated the following about  
21 the Predecessor Can Read System:

22 The videotape shows 50 words one by one, while bouncy music plays in the  
23 background.

24 "This says crawling," the narrator intones as the word appears onscreen. "Can you say  
25 crawling?"

26 But crawling is an alien concept for many in the video's target audience. They're too  
27 young to even sit up.

28 The videotape, called "Your Baby Can Read!" is designed for children as young as 3  
months. And it's just one in a wave of popular new products that claim they can  
stimulate brain development during the critical first three years of life.

There are also "Brainy Baby" and "Baby Shakespeare" videos. Flashcards and  
educational software programs for infants. Cassette tapes to teach Spanish, German or  
French. Classical music CDs to strengthen the neural pathways "linked to abstract and  
spatial reasoning."

Although most child development specialists say it's doubtful these products will make  
your child smarter, manufacturers and toy stores say they're selling briskly.

Robert Titzer, a San Diego public school teacher, said he has sold almost 60,000 of his  
\$15 "Your Baby Can Read!" videos since their 1997 debut.



1 The Baby Einstein Co., also launched in 1997 by a Colorado at-home mom, had sales of  
2 \$3.4 million last year and expects to sell \$20 million of its videos, CDs and flashcards  
3 for babies this year.

4 Sales of computer software for babies and toddlers have doubled since 1997, according  
5 to the market research company PC Data.

#### 6 Science vs. psychology

7 The trend has drawn rebukes from many child-development researchers, who say the  
8 makers of such products are misinterpreting the findings of neuroscience and causing  
9 parents to worry needlessly about their baby's development. Infants and toddlers grow  
10 intellectually through everyday experiences rather than because of any particular toy or  
11 video, several experts said.

12 "We do know . . . the types of experiences and relationships a baby has in the first few  
13 months and years of life are critically important," said Matthew Melmed, executive  
14 director of Zero to Three, a nonprofit group that studies young children's development.  
15 "But to translate that research into specific products to boost babies' brainpower is  
16 really an abomination - a commercial abomination."

17 The makers defend their claims by citing research studies on brain growth, although the  
18 studies did not involve their products. In a few cases, the companies point to scientists  
19 they consulted and to awards the products have won from various organizations.

20 Debra Mills, a neuroscientist at the University of California at San Diego who consulted  
21 on the development of "Brilliant Beginnings," a \$40 book-and-CD kit for parents  
22 interested in "nurturing the genius in your child," acknowledged there are no studies  
23 linking brain growth to specific infant activities. Nevertheless, she said, the kit is a  
24 useful guide to the enriching experiences a baby needs.

25 "A lot of parents don't know what to do, even very well-educated people," Mills said.  
26 "This just gives a minicourse in human development."

27 Parents buying the items say they want to make sure their children don't fall behind at a  
28 crucial stage in their development.

But educators and researchers say there's no cause for such worrying. Parents who read  
and play with their babies, respond to their cues and show them affection are giving  
them all that's needed for optimum brain development, they say. What matters are  
"things that good parents have known how to do since the beginning of time," said  
Robert Slavin, an educational researcher at Johns Hopkins University.

Critics of the smart-baby products say those who market them are confusing neurology,  
the study of the brain as a spongy, grayish lump, and psychology, the study of human  
behavior.

There are many psychological studies, having nothing to do with brain cells, showing  
that very young children deprived of normal experiences develop emotional or  
intellectual disabilities. Meanwhile, neurologists have discovered that the number of  
synapses, or vital connection points, in the brain increases enormously from before birth  
to age 3 and begins to drop in early puberty.

1 But scientists say there's no evidence that this surge of synapses will get an extra boost  
2 from particular images, sounds or activities, although brain growth can decrease when  
children are severely abused or neglected.

3 "There are no data to show that with each new experience you're adding synaptic  
4 connections," said Harry Chugani, director of the PET center at Children's Hospital of  
Michigan, who has been at the forefront of research into children's brain development.

5 Although school officials have stressed reading aloud and giving books to children  
6 before they start kindergarten, several educators are skeptical about products designed to  
7 teach babies how to read. While it's possible for a child under age 2 to look at a printed  
word, say it aloud and point to an object to demonstrate the word's meaning, they  
question whether that will make the child a better reader in later years.

8 The best advice for raising a smart baby, said Robert Pianta, professor of clinical  
9 psychology at the University of Virginia, is "relax and enjoy playing with your  
children."

10 Exhibit 6.

11 34. Despite the criticisms available to the public about the Predecessor Can Read System,  
12 Dr. Titzer continued to tout the efficacy of the Can Read Systems. Indeed, since 2007, defendants  
13 engaged in a marketing campaign that marketed the purportedly new, but more expensive, Can Read  
14 System. Defendants marketing campaign was created to influence consumers about the efficacy of the  
15 Can Read System.

16 35. On July 2, 2009, Dr. Steven Novella, an academic clinical neurologist at Yale University  
17 School of Medicine, analyzed the Can Read System and the claims made by defendants on his  
18 *NeuroLogica Blog* and emphatically concluded that no scientific research supports the efficacy of the  
19 products:

20 I have received numerous questions recently regarding the latest infomercial  
21 craze called Your Baby Can Read. This is a program that promises to teach infants and  
toddlers how to read, giving them a jump start on their education. Their website claims:

22 "A baby's brain thrives on stimulation and develops at a phenomenal pace . . .  
23 early 90% during the first five years of life! The best and easiest time to learn a  
24 language is during the infant and toddler years, when the brain is creating thousands of  
synapses every second – allowing a child to learn both the written word and spoken  
word simultaneously, and with much more ease."

25 This is mostly true – in fact the first four years of life is not only the best time to  
26 learn a language, it is the only time that language itself can be acquired. If a child is  
27 completely deprived of exposure to language during this time the neuro-developmental  
28 window will close. People can still, of course, learn second languages after the age of  
four, but it is more difficult and their brains will never be as hard-wired for those second  
languages as they are for a primary language learned before age four.

1 *But the company goes off the rails of evidence when it conflates language with*  
 2 *reading. There is no window of opportunity for reading like there is with language –*  
 3 *adults who have never read can learn how to read. And while our brains are pre-*  
 4 *programmed to absorb language, reading is more of a cultural adaptation.*

5 *The site also abuses evidence when it claims that:*

6 “Studies prove that the earlier a child learns to read, the better they perform in  
 7 school and later in life.”

8 Yes – but this might have something to do with smarter kids being able to learn  
 9 to read earlier. Also, smarter parents, or just parents in a more stable and nurturing  
 10 environment, may be more likely to read to their children early. What we have is  
 11 correlational data with lots of variables. None of this necessarily means that forcing kids  
 12 to learn to read early has any advantage.

13 In general studies of neurological development and education show that forcing  
 14 kids to learn some task before their brains are naturally ready does not have any  
 15 advantage. *You cannot force the brain to develop quicker or better. In fact, it seems*  
 16 *that children need only a minimally stimulating environment for their brain*  
 17 *development program to unfold as it is destined to.*

18 *This further means that the whole “baby genius” industry for anxious parents*  
 19 *is misguided. This is just the latest incarnation of this fiction.*

20 There is another layer to this debate, however – that between phonics and whole  
 21 word or whole language reading. One school of thought believes that children learn to  
 22 read by first mastering the sounds that letters make then putting them together (ala  
 23 hooked on phonics). The second school of thought believes the children read whole  
 24 words, and therefore can be taught to memorize whole words and the phonemic  
 25 understanding will come later in its own time.

26 In recent years the phonics side of this debate has been dominant in the  
 27 education community. But the whole word group is a vocal minority.

28 However it also seems that there is an emerging third group who combine the  
 two methods in a practical way. People read by both constructing words from their  
 phonetic parts, an also by memorizing and reading whole words. Have you ever  
 received this e-mail:

“Arocdnig to rsceearch at Cmabrigde Uinervtisy, it deosn’t mtiær in waht oreðr  
 the ltteers in a wrod are, the olny iprmoatni tihng is taht the frist and lsat ltteer are in the  
 rghit pcale. The rset can be a toatl mses and you can sitll raed it wouthit pobelrm. Tihis is  
 buseace the huamn mnid deos not raed ervey lteter by istlef, but the wrod as a wlohe.”

This would seem to support the whole word school of thought. However, we also  
 learn new words by sounding them out, and still have to do this for uncommon words.  
 So a blended approach seems practical and is gaining acceptance.

The Your Baby Can Read program is an extreme whole word approach. Infants  
 and toddlers are taught to memorize words, which they can then recognize and name  
 from memory, even before they can understand what they are reading. Critics of this  
 approach claim that this is not really reading, just memorization and association. Some  
 even caution that by taking an extreme whole word approach, phonic understanding can  
 be delayed and the net result can be negative.

Others are critical of this entire approach of forced learning at a very young age. It is more productive, they argue, to give the child a loving supportive environment and let their brain develop as it will. You are far better off spending your time playing with and bonding with your child than engaged in drills or having them sit in front of a video.

*There also does not appear to be any evidence that programs like Your Baby Can Read have any long term advantage. Their website does not provide links to any published studies to support their claims. Regarding the founder it declares:*

*Dr. Titzer's research has been published in scientific journals, including the prestigious Psychological Review.*

*True – but misleading as a Pubmed search on Titzer R came up with only two publications, neither of which have anything to do with learning to read. His Wikipedia page claims that he has published no scholarly work on infant reading.*

#### Conclusion

*While the background concepts are quite interesting, the bottom line is that we have another product being marketed to the public with amazing claims and no rigorous scientific evidence to back them up. This product also falls into the broader category of gimmicky products claiming to make children smarter or more successful academically.*

*Anxious parents wanting to give their kids every advantage is a great marketing demographic, in that they are easily exploited. But like all gimmicky schemes promising easy answers to complex or difficult problems (weight loss, relationships, or academic success) in the end it is likely to be nothing but a costly distraction from more common sense approaches – like just spending quality time with your kids and giving them a rich and safe environment. What such products often really provide is a false sense of control.*

Exhibit 7 (Dec. 28, 2010), <http://theness.com/neurologicablog/?p=569>.

36. Dr. Novella responded to a post criticizing his July 2, 2009 conclusions with respect to the Can Read System:

John,

Thanks for your thoughtful feedback. However, I disagree with your reading of my post. Essentially, you seem to agree with my core point – the company makes claims not backed by adequate evidence, but disagree with the form of my critique.

For example, you object to my use of the term “force” – but you misread my usage. This is not meant to be emotive – I use the term “force” to mean that you can make something happen ahead of schedule.

You also misread my use of the word “extreme” – again, this was used specifically to mean one end of a spectrum. I understand that the instructions include other techniques, but the core of the program and the way it is sold is at one end of the reading strategy spectrum.

Further, I disagree that all we can say is that this product lacks evidence. We do have a body of neurological research that indicates that as people mature they reach



1 their intellectual potential, as long as they do no[t] have a deprived environment. Doing  
 2 extra or early work does not improve long term outcomes. So this is a reasonable default  
 position unless there is evidence to suggest otherwise -- which you agree, there isn't.

3 And to clarify -- I am not talking about fund of knowledge, but rather intellectual  
 4 skills, like reading.

5 If the program encourages quality time between parent and child, fine. But then  
 6 you could do this without spending any money on a program -- which is what I  
 recommended.

7 I also did not mean the term "anxious" to be derogatory. I am an anxious parent  
 8 -- all parents should be appropriately anxious. Anxiety is an adaptive trait. Appropriately  
 concerned, anxious, motivated parents are easy to exploit by making them feel as if they  
 are missing out if they don't buy some product.

9 *So I completely stand by my characterization that this product makes*  
 10 *unsubstantiated claims, lacks plausibility, is conceptually problematic, and very*  
*deliberately exploits their target demographic.*

11 *Id.*

12 37. On November 1, 2010, an msnbc.com article, by Jeff Rossen and Robert Powell,  
 13 entitled "'Your Baby Can Read' Claims Overblown, Experts Say," reported that defendants' statements  
 14 concerning the Can Read System are false and misleading:

15 Ginger Torres was fascinated by the television commercials featuring babies, some as  
 16 young as 3 months old, reading. Not just words but phrases, like "Touch your ears."

17 The ads boasted that the remarkable achievement was made possible by "Your Baby  
 18 Can Read," a program which promised that with the use of flash cards, DVDs, pop-up  
 books and some quality time between parent and child, almost any preschooler could  
 learn to read before they even entered kindergarten.

19 Ginger Torres wanted that for her 3-year-old daughter, Chloe, so she bought the kit. It  
 20 was a decision she would come to regret. "The reason I wanted to buy it is to give her a  
 head start before school," Torres said. "[But] what you're getting is not really what they  
 say."

#### 21 Reading or memorization?

22 TODAY wanted to find out if the claims were true, so child development experts from  
 23 the nation's most prestigious institutions of learning were contacted as part of an  
 investigation of the "Your Baby Can Read" program.

24 Are those babies really reading?

25 "No," said Dr. Nonie Lesaux, a child development expert at the Harvard University  
 26 Graduate School of Education. "They memorize what's on those cue cards ... It's not  
 reading."

27 "It's an extraordinary manipulation of facts," said Dr. Maryanne Wolf, director of  
 28 Cognitive Neuroscience at Tufts University.



1 From coast to coast, TODAY found 10 experts who were all of the same basic opinion:  
2 Young children can be made to recognize or memorize words, but the brains of infants  
3 and toddlers are just not developed enough to actually learn to read at the level the way  
4 the enticing television ads claim they can.

5 There are some remarkable exceptions, like the toddler who surprised Ann Curry on  
6 TODAY in 2008 when Curry pulled out a cue card with a word the child had never seen  
7 before. She successfully mouthed the word "kangaroo," but experts say the vast  
8 majority of children cannot be taught to read until their brains are developed enough.

#### 9 Dashed hopes

10 The problem with programs like "Your Baby Can Read," the experts TODAY contacted  
11 say, is that they promise such results routinely, raising hopes that will only be dashed.

12 "I think it's misleading. I think it's false, and I think it raises false expectations," said  
13 Dr. Karen Hopkins, a developmental pediatrician at New York University's Langone  
14 Medical Center.

15 Asked about the experts' collective opinion that children cannot really learn to read until  
16 they are 4 or 5 years old, the creator of "Your Baby Can Read" offered a simple  
17 explanation.

18 "They're all wrong," said Dr. Robert Titzer, who calls himself an infant learning expert  
19 but actually holds a graduate degree in "human performance" — the study of motor  
20 skills.

21 Titzer told TODAY his program is backed by scientific research. He acknowledged that  
22 it starts with memorization, but insisted it leads to reading. "We have a book full of  
23 studies that support the use of our program," Titzer said, agreeing to provide the  
24 research.

25 But instead of published research on "Your Baby Can Read," Titzer sent TODAY his  
26 own customer satisfaction surveys and general studies about child learning.

27 Titzer stood by his company's claims.

28 "The baby does learn to read," he said. "My children could read better at age 4 than I  
could at age, you know, at my age."

Titzer would not disclose how much money he's made off his program, but the company  
says more than a million "Your Baby Can Read" kits have been sold — some for as  
much as \$200 in stores and online.

Ginger Torres got her money back after complaining to the company, but believes the  
program is still cashing in on false promises.

"I was very upset because I felt so misled," Torres said.

The experts say the best way to teach your children reading skills is the time-honored  
one that doesn't cost a dime.

Read to them. Talk to them. Play with them. If a child is having fun, he or she will learn.

Exhibit 4.

38. Matthew Melmed, an Executive Director of the National Center for Infants, Toddlers and Families was similarly skeptical about defendants' claims:

"I take the position, based on extensive research we have on the early years of life, that most of these products are useless. Some can even be harmful. Babies don't need a flat, one-dimensional screen that isn't responding to them. What babies need are relationships with a small number of adults who know them, who are capable of reading and responding to their cues in a sensitive fashion. Products that are designed to essentially have them not interact with adults will do nothing toward that. You can't buy a relationship."

Exhibit 8 (Dec. 28, 2010), <http://www.southjersey.com/articles/?articleID=1446>.

39. Dr. Robert Needlman, M.D., an professor in pediatrics, stated the following about Dr. Titzer's representations:

There's a lot of hype that says that children have to be exposed to all sorts of things or else they'll be crippled for life and that's simply not true. It's based on a misunderstanding of the scientific data. It does not mean that more and more structured and more school-like learning early on is helpful for children and it simply isn't. I am a huge believer in reading aloud to young children from a very early age, not to teach them to read early. The child who reads at age three or four is not necessarily going to do better in life than a child who reads at age five or six. [Parents] shouldn't kid themselves into thinking that this experience is somehow wonderfully stimulating for their baby. It isn't.

(Dec. 28, 2010), <http://today.msnbc.msn.com/id/39953918/ns/today-money> (video).

40. Defendants have had actual knowledge of the inefficacy of the Can Read Systems since at least as early as 2000 as a result of, *inter alia*, numerous complaints, including those complaints posted on public websites. Upon information and belief, complaints of the products' ineffectiveness were conveyed to at least one of the defendants. Below is the relevant excerpt from one of these complaints:

Source / Date	Relevant Portion
Mamapedia.com July 2009	My daughter learned some word recognition, like Hi, Car, Star at 19 months...however at age 3 she does not know these words anymore. * * * I got suckered in to this program. I feel it was a waste of money. My three year old likes to watch them now and then but so far we have not seen results like was shown on tv.

41. Had plaintiff and the Class known the truth about the Can Read Systems, they would not have purchased these products. Moreover, Class members were unable to return the product as the "30 day money back guarantee"<sup>3</sup> was deceptive. Dr. Titzer on the one hand admitted that consumers of the Can Read Systems "need to be consistent about it for six months" in order to notice some beneficial impact on the child's reading abilities, yet, on the other hand, defendants' guarantees expire after only one month.

#### CLASS ACTION ALLEGATIONS

42. This is a case where the plaintiff and the Class shared interest in common property is at stake.

43. Plaintiff brings this action, on behalf of herself and all other persons similarly situated, as a class action pursuant to C.C.P. §382. The class which plaintiff seeks to represent is composed of and defined as follows:

All individuals who purchased or acquired any of the Can Read Systems from December 2006 through the date on which notice of this action is provided to Class Members (the "Class Period").

Specifically excluded from the Class are defendants, officers, directors or employees of Your Baby, any entity in which any defendants have a controlling interest and any of the affiliates, legal representatives, attorneys, heirs or assigns of defendants. Plaintiff reserves her right to amend the Class definition if discovery and further investigation reveal that the Class should be expanded or otherwise modified.

44. This case has been brought and may properly be maintained as a class action, pursuant to the provisions of C.C.P. §382 because, *inter alia*, there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

45. **Numerosity:** The Class is so numerous and geographically dispersed that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to plaintiff at this time, plaintiff is informed and believes that thousands of purchasers exist to make joinder of all members of the Class impracticable.

Exhibit 9.

1           46.   **Common Questions Predominate:** Common questions of law and fact exist as to  
 2 plaintiff and all Class members and predominant over any questions which affect only individual  
 3 members of the Class. These common questions of law and fact include, without limitation:

4           (a)   Whether defendants engaged in a common course of conduct that is likely to  
 5 deceive plaintiff in connection with the marketing of the Can Read Systems;

6           (b)   Whether the Can Read Systems fail to effectively do what defendants advertised;

7           (c)   Whether the products failed to have qualities, characteristics, effects, or  
 8 otherwise as they were marketed and sold by defendants;

9           (d)   Whether the laws were violated by defendants, as alleged herein, by engaging in  
 10 the described practices;

11           (e)   Whether plaintiff and the Class are entitled to declaratory, injunctive and/or  
 12 equitable relief; and

13           (f)   Whether plaintiff and the Class are entitled to compensatory damages.

14           47.   **Typicality:** Plaintiff's claims are typical to the claims of Class members. Plaintiff and  
 15 the Class sustained damages arising out of defendants' common course of conduct in violation of law as  
 16 complained of herein. The damages of each Class member was caused directly by defendants'  
 17 wrongful conduct in violation of law as alleged herein.

18           48.   **Adequacy:** Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff  
 19 is an adequate representative of the Class and has no interests which are adverse to the interests of  
 20 absent class members. Plaintiff has retained counsel who have substantial experience and success in the  
 21 prosecution of complex class action and consumer protection litigation.

22           49.   **Superiority:** A class action is superior to other available means for the fair and efficient  
 23 adjudication of this controversy since individual joinder of all Class members is impracticable. Class  
 24 action treatment will permit a large number of similarly situated persons to prosecute their common  
 25 claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort  
 26 and expense that numerous actions would engender. Furthermore, the expenses and burden of  
 27 individual litigants and the lack of knowledge of Class members regarding defendants' activities, would  
 28 make it difficult or impossible for individual Class members to redress the wrongs done to them, while

1 an important public interest will be served by addressing the matter as a class action. The cost to the  
 2 court system of adjudication of such individualized litigation would be substantial. Individualized  
 3 litigation would also present the potential for inconsistent or contradictory judgments.

4 50. Plaintiff is unaware of any difficulties that are likely to be encountered in the  
 5 management of this action that would preclude its maintenance as a class action.

6 51. Defendants have, or have access to, address information for the Class members, which  
 7 may be used for the purpose of providing notice of the pendency of this class action.

8 52. Plaintiff seeks preliminary and permanent injunctive, and equitable relief on behalf of  
 9 the entire Class, on grounds generally applicable to the entire Class, to enjoin and prevent defendants  
 10 from engaging in the acts described, and to obtain full restitution to plaintiff and the Class.

11 53. Absent a class action, defendants' violation of the law will continue and they will  
 12 continue to reap and retain the substantial proceeds received as a result of their improper conduct.

#### 13 FIRST CAUSE OF ACTION

14 (Unlawful Business Acts and Practices in Violation of California Business & Professions Code  
 15 §17200, *et seq.*)

16 54. Plaintiff incorporates the above allegations by reference as if set forth herein.

17 55. Section 17200 of the California Business & Professions Code prohibits "unlawful,"  
 18 "unfair" and "fraudulent" business practices. Unfair competition also includes unfair, deceptive, untrue  
 19 or misleading advertising. The Act provides for injunctive relief and restitution for violations.

20 56. Defendants have violated §17200 by falsely marketing the Can Read Systems.  
 21 Defendants falsely represented to consumers that, *inter alia*, the Can Read Systems could teach infants  
 22 and children to read at a very young age. Defendants further misrepresented that scientific trials were  
 23 conducted proving defendants' outlandish assertions. In fact, the exact opposite was true, as many  
 24 scientists and experts concluded that the Can Read Systems were ineffective and worthless.

25 57. Despite knowing that their products could not teach infants how to read, defendants  
 26 conducted a ubiquitous marketing campaign. In furtherance of their scheme, defendants knowingly  
 27 and/or recklessly disseminated the following false and misleading claims to vulnerable new parents and  
 28 other unsuspecting educators about the Can Read Systems:



- 1 (a) that the products can teach a three month old baby to read by nine months old;
- 2 (b) that the products can enable a five year old to read junior high school level
- 3 books;
- 4 (c) that the products can teach infants suffering from Down's syndrome how to read;
- 5 (d) that the products can teach an infant how to read at an early age and that this
- 6 would prevent learning disabilities, including dyslexia; and
- 7 (e) that studies performed by the scientific community "support the use" of the
- 8 products.

9 58. Business & Professions Code §17200 prohibits any "*unlawful* . . . business act or  
 10 practice." Defendants have violated §17200's prohibition against engaging in an unlawful act or  
 11 practice by, *inter alia*, making material misrepresentations and omissions regarding their products as set  
 12 forth more fully elsewhere in this Complaint in violation of Cal. Civ. Code §§1572 (actual fraud), 1573  
 13 (constructive fraud), 1709 and 1710 (deceit), 1750 *et seq.* (the CLRA); Cal. Bus. & Prof. Code §17500  
 14 (false advertising); and the common law, including the breach of contract and breach of the duty to  
 15 disclose. Plaintiff reserves her right to allege other violations of law which constitute other unlawful  
 16 business acts or practices. Such conduct is ongoing and continues to this date.

17 59. Business & Professions Code §17200 also prohibits any "*unfair* . . . business act or  
 18 practice." As detailed in the preceding paragraphs, defendants engaged in a course of conduct to  
 19 mislead vulnerable parents and other consumers concerning the features and qualities of their products,  
 20 violating fundamental policies of this State. Defendants' business practices as detailed above are also  
 21 immoral, unethical, oppressive or unscrupulous. Further, any justification for defendants' wrongful  
 22 conduct are vastly outweighed by the adverse effects of such conduct. As a result, defendants engaged  
 23 in unfair business practices prohibited by Business & Professions Code §17200 *et seq.*

24 60. Business & Professions Code §17200 also prohibits any "*fraudulent* business act or  
 25 practice." Defendants violated this prong of the UCL by disseminating, through common advertising,  
 26 untrue statements about their products that have a tendency to mislead the public and making numerous  
 27 common material misrepresentations with the intent to induce reliance by consumers to purchase these

28

1 products. As detailed in the preceding paragraphs, defendants' course of conduct and advertising  
2 campaign were likely to deceive parents and other consuming members of the public.

3 61. Pursuant to Business & Professions Code §17203, plaintiff seeks an order requiring  
4 defendants to immediately cease such acts of unlawful, unfair and fraudulent business practices and  
5 requiring defendants to return the full amount of money improperly collected to all those who have paid  
6 them.

7 62. Defendants' unfair competition caused harm to plaintiff and the Class, as they purchased  
8 an unsubstantiated product whose efficacy was misrepresented by defendants. Plaintiff and the Class  
9 paid more than they would have paid had defendants not concealed the truth concerning the Can Read  
10 System. Had plaintiff and the Class known the truth about the Can Read Systems, a clearly material  
11 fact, they would not have purchased these products.

12 63. The above-described acts conducted by defendants continue to this day to present a  
13 threat to the Class in that defendants have failed and refused to publicly acknowledge the wrongdoing  
14 of their actions, issue a recall, or publicly issue a disclaimer to actual and potential Class members of  
15 their continued deceptive practices.

16 64. As a result of the conduct described above, defendants have been and will be unjustly  
17 enriched at the expense of plaintiff and the Class.

## 18 SECOND CAUSE OF ACTION

19 (False and Misleading Advertising in Violation of California Business & Professions Code  
20 §17500, *et seq.*)

21 65. Plaintiff incorporates the above allegations by reference as if set forth herein.

22 66. California Business & Professions Code §17500 prohibits various deceptive practices in  
23 connection with the dissemination in any manner of representations which are likely to deceive  
24 members of the public to purchase products and services such as Can Read System.

25 67. Defendants' acts and practices as described herein have deceived and/or are likely to  
26 deceive plaintiff and the Class. Defendants have spent over \$37 million to advertise, including through  
27 their websites on the Internet, to call attention to, or give publicity to the Can Read Systems. Despite  
28 knowing that their products could not teach infants how to read, defendants conducted this ubiquitous

1 marketing campaign. In furtherance of their scheme, defendants knowingly and/or recklessly  
 2 disseminated the following false and misleading claims in a way that would lead a reasonable consumer  
 3 to believe the following about the Can Read Systems:

4 (a) that the products can teach a three month old baby to read by nine months old;

5 (b) that the products can enable a five year old to read junior high school level  
 6 books;

7 (c) that the products can teach infants suffering from Down's syndrome how to read;

8 (d) that the products can teach an infant how to read at an early age and that this  
 9 would prevent learning disabilities, including dyslexia; and

10 (e) that studies performed by the scientific community "support the use" of the  
 11 products.

12 68. By their actions, defendants are disseminating uniform advertising concerning their  
 13 products and services, which by its nature is unfair, deceptive, untrue, or misleading within the meaning  
 14 of California Business & Professions Code §17500, *et seq.* Such advertisements are likely to deceive,  
 15 and continue to deceive, the consuming public for the reasons detailed above.

16 69. Defendants intended plaintiff and the Class to rely upon the advertisements and  
 17 numerous material misrepresentations as set forth more fully elsewhere in the Complaint. In fact,  
 18 plaintiff and the Class relied upon the advertisements and misrepresentations to their detriment.

19 70. The above-described false, misleading, and deceptive advertising defendants'  
 20 disseminated continues to have a likelihood to deceive in that defendants have failed to disclose the true  
 21 and actual performance of the Can Read Systems. Defendants have failed to instigate a public  
 22 information campaign to alert consumers of these deficiencies, which continues to create a misleading  
 23 perception of the efficacy of the Can Read Systems.

24 71. In making and disseminating the statements alleged herein, defendants should have  
 25 known their advertisements were untrue and misleading in violation of California Business &  
 26 Professions Code §17500, *et seq.* Plaintiff and the Class members based their decisions to purchase the  
 27 Can Read Systems in substantial part on defendants' misrepresentations and omitted material facts. The  
 28 revenues to defendants attributable to products sold in those false and misleading advertisements

1 amount to millions of dollars. Plaintiff and other Class members were injured in fact and lost money or  
2 property as a result.

3 72. The misrepresentations and non-disclosures by defendants of the material facts detailed  
4 above constitute false and misleading advertising and therefore constitute a violation of California  
5 Business & Professions Code §17500, *et seq.*

6 73. As a result of defendants' wrongful conduct, plaintiff and the Class request that this  
7 Court cause defendants to restore money to them, and to enjoin defendants from continuing to violate  
8 California Business & Professions Code §17500, *et seq.*

9 74. Such conduct is ongoing and continues to this date. Plaintiff and the Class are therefore  
10 entitled to the relief as detailed below.

### 11 THIRD CAUSE OF ACTION

12 (Violations of the Consumer Legal Remedies Act, Civil Code §1750, *et seq.*)

13 75. Plaintiff incorporates the above allegations by reference as if set forth herein.

14 76. The California Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.* (the  
15 "Act"), provides California consumers with a comprehensive procedure for redressing defendants'  
16 violations of various statutory rights.

17 77. Plaintiff and the Class members are consumers as defined by Cal. Civ. Code §1761(d).  
18 defendants' products constitute "services" and/or "goods" as defined by Cal. Civ. Code §1761(a) and  
19 (b). At all times relevant hereto, defendants constituted "persons" as that term is defined in Cal. Civ.  
20 Code §1761(c)

21 78. Defendants' actions violate the Act in at least the following respects:

22 (a) In violation of §1770(a)(5) of the Act, defendants' acts and practices constitute  
23 misrepresentations that the goods in question have characteristics, benefits or uses which they do not  
24 have;

25 (b) In violation of §1770(a)(7) of the Act, defendants misrepresented that the goods  
26 are of particular standard, quality and/or grade, when they are of another;

27 (c) In violation of §1770(a)(9) of the Act, defendants' acts and practices constitute  
28 the advertisement of the services in question without the intent to sell them as advertised;

1 (d) In violation of §1770(a)(14) of the Act, defendants' acts and practices fail to  
 2 represent that the transaction involving the merchandise in question confers or involves obligations that  
 3 are prohibited by law; and

4 (e) In violation of §1770(a)(16) of the Act, defendants' acts and practices constitute  
 5 representations that the subject of the transaction has been supplied in accordance with previous  
 6 representations when it has not.

7 79. By reason of the foregoing, plaintiff and the Class have been irreparably harmed,  
 8 entitling them to both injunctive relief and restitution.

9 80. Pursuant to §1782 of the Act, plaintiff notified defendants in writing of the particular  
 10 violations of §1770 of the Act and demanded defendants rectify the actions described above by  
 11 providing complete monetary relief, agreeing to be bound by their legal obligations and to give notice to  
 12 all affected customers of their intent to do so. Plaintiff sent this notice by certified mail, return receipt  
 13 requested, to defendants' principal place of business.

14 81. If defendants fail to adequately respond to plaintiff's demand within 30 days of the letter  
 15 pursuant to §1782 of the Act, plaintiff will amend this claim to add additional claims for relief,  
 16 including claims for compensatory and exemplary damages. Plaintiff is already entitled to the relief set  
 17 forth above, along with costs, attorneys' fees and any other relief which the Court deems proper.

#### 18 FOURTH CAUSE OF ACTION

##### 19 (Breach of Contract)

20 82. Plaintiff incorporates the above allegations by reference as if set forth herein.

21 83. Plaintiff and the Class agreed to purchase the Can Read Systems from defendants.

22 84. The terms of the contract were substantially identical as applied to all Class members.  
 23 The documents distributed by defendants and the Terms and Conditions governing the sales of the Can  
 24 Read Systems, were substantially identical as applied to all Class members.

25 85. Defendants did not provide the agreed-upon services. Material terms of the sales  
 26 contract required defendants to provide the Can Read Systems as advertised. Defendants breached their  
 27 contractual obligations by disseminating false and misleading representations concerning the products  
 28 and providing products to plaintiff and the Class that could not perform as advertised.



1 86. Plaintiff and the Class relied on defendants' false and misleading representations to their  
2 detriment.

3 87. Plaintiff and the Class have been damages as a result of defendants' breaches of their  
4 contracts.

5 **FIFTH CAUSE OF ACTION**

6 **(Negligent Misrepresentation)**

7 88. Plaintiff repeats and realleges the allegations contained in the paragraphs above as if  
8 fully set forth herein.

9 89. Throughout the Class Period, defendants made misrepresentations and omissions to  
10 plaintiff and the Class concerning their products, including that their Can Read Systems:

- 11 (a) teach a three month old baby to read by nine months old;
- 12 (b) enable a five year old to read junior high school level books;
- 13 (c) teach infants suffering from Down's syndrome how to read;
- 14 (d) teach an infant how to read at an early age and that this would prevent learning
- 15 disabilities, including dyslexia; and
- 16 (e) are supported by scientific studies concerning their efficacy.

17 90. Defendants' misrepresentations and omissions are false and misleading because their  
18 products do not teach infants and small children to read, and there is no scientific support for the  
19 efficacy of these products.

20 91. Defendants' representations are continuing and ongoing. Defendants represented to  
21 plaintiff and each and every Class member that the above identified facts were true when they had no  
22 reasonable grounds for believing them to be true.

23 92. Defendants made the representations and omissions set forth above with the intent to  
24 induce plaintiff and Class members to alter their position to their injury by buying or acquiring the  
25 products.

26 93. Plaintiff and Class members reasonably believed that defendants' representations and  
27 omissions were true and were materially complete and did not know of the falsity of the representations  
28 and were unaware of the facts omitted which materially qualified the facts disclosed and rendered

1 defendants' representations likely to deceive. In reliance on defendants' representations and omissions,  
 2 in the belief that the representations were materially complete, and induced by the omissions which  
 3 materially qualified the facts disclosed, plaintiff and Class members purchased or acquired these  
 4 products and have been damaged in an amount to be determined at trial.

#### 5 SIXTH CAUSE OF ACTION

#### 6 (Unjust Enrichment)

7 94. Plaintiff incorporates the above allegations by reference as if set forth herein.

8 95. Defendants have received, and continue to receive, a benefit at the expense of plaintiff  
 9 and the Class.

10 96. Defendants knowingly and/or recklessly disseminated false and misleading claims to  
 11 plaintiff and the Class about the Can Read Systems. Plaintiff and the Class conferred upon defendants,  
 12 without knowledge of the truth concerning the Can Read Systems, payment for the product.  
 13 Accordingly, defendants have received benefits that they have unjustly retained at the expense of  
 14 plaintiff and the Class.

15 97. As a direct and proximate result of defendants' unlawful acts and conduct, plaintiff and  
 16 the Class were deprived of the use of their money that was unlawfully charged and collected by  
 17 defendants, and are therefore entitled to reimbursement of any money unjustly paid to defendants in  
 18 connection with the sale of the Can Read Systems.

#### 19 PRAYER FOR RELIEF

20 Plaintiff, individually, and on behalf of the Class, prays for judgment and relief against  
 21 defendants as follows:

22 A. For an order declaring this a class action;

23 B. For an order enjoining defendants from continuing to sell the products and pursue the  
 24 above policies, acts and practices;

25 C. For an order requiring defendants to fund a corrective advertising campaign in order to  
 26 remedy defendants' wrongful conduct;

27 D. For an order awarding restitution of the monies defendants wrongfully acquired by  
 28 defendants' unfair, deceptive, and unlawful business practices;

1 E. For an order requiring disgorgement of monies wrongfully obtained as a result of  
2 defendants' unlawful, unfair and deceptive business practices as alleged herein;

3 F. For compensatory and punitive damages arising from defendants' unlawful and  
4 fraudulent conduct as alleged herein;

5 G. For reasonable attorneys' fees pursuant to statute or common law;

6 H. For pre-judgment and post-judgment interest at the legal rate; and

7 I. For costs of this suit; and

8 J. For such other and further relief as the Court deems just and proper.

9 JURY DEMAND

10 Plaintiff demands a trial by jury on all issues so triable.

11 DATED: December 29, 2010

ROBBINS GELLER RUDMAN  
& DOWD LLP  
RACHEL L. JENSEN

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Attorneys for Plaintiff

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# EXHIBIT 1

Your Baby Can Read® - Receive free shipping and bonus 5-DVD set just for trying!



First Name:  
Last Name:  
Email:  
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Address 2:  
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### What Makes Your Baby Can Read!® So Special?

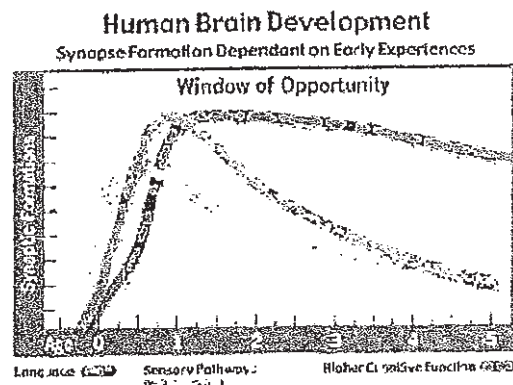
A baby's brain thrives on stimulation and develops at a phenomenal pace...nearly 90% during the first five years of life! The best and easiest time to learn a language is during the infant and toddler years...when the brain is creating thousands of synapses, or connections, allowing a child to learn both the written word and spoken word simultaneously.

Seize this small window of opportunity to enhance your child's learning ability with the Your Baby Can Read! Early Language Development System.

### Benefits of Early Literacy

According to Your Baby Can Read! developer Dr. Robert Titzer, the current practice of starting to teach reading in school is too late. When children develop reading skills during their natural window of opportunity, from about birth to age four, they read better and are more likely to enjoy it.

In fact, studies prove that the earlier a child learns to read, the better they perform in school and later in life. Early readers have more self-esteem and are more likely to stay in school. Meanwhile, a national panel of reading specialists and educators determined that most of the nation's reading problems could be eliminated if children began reading earlier.

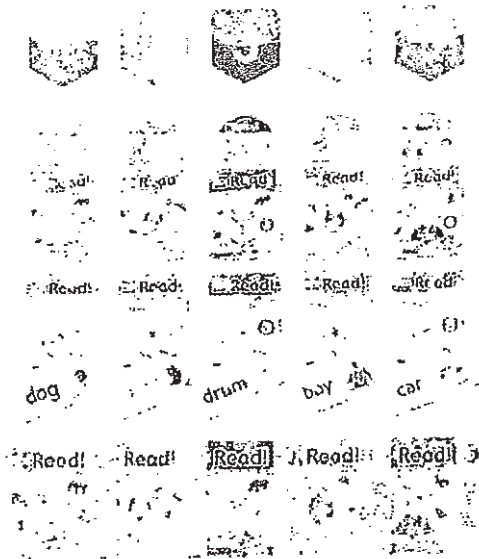


<http://www.yourbabycanread.com/>

12/28/2010



**Your Baby Can Read® - Receive free shipping and bonus 5-DVD set just for trying!**



#### What You Get

Getting started is as easy as ABC. With the Your Baby Can Read! Deluxe Kit, you'll get a complete set of tools to unlock your child's reading potential.

For your child:

- **Your Baby Can Read! Complete 5-Level DVD Reading System.** These fun, interactive videos will keep your baby reading and entertained!
- **5 Sets of Sliding Words Cards.** The read & play cards accompany each level and reinforce what your child has learned.
- **5 Lift-a-Flap Books.** The word and picture books accompany each level and introduce familiar words from the DVDs in a new format.

For you:

**Baby's First Teacher Pack.** Contains everything you need to help your child succeed!

- **Parent's Guide.** Gives easy step-by-step instructions to the Your Baby Can Read! Program.
- **Early Learning Workshop DVD.** Dr. Titzer shares his secrets for a fun, multi-sensory approach to early language development.
- **Teaching Cards.** 15 Fun Games with 83 double-sided Interactive Cards to play with your child!



#### Baby's First Teacher Pack!

Contains everything you need to help your child succeed!

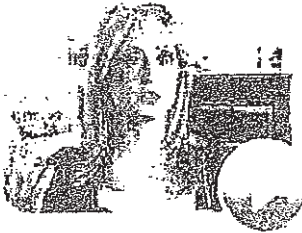


Your Child Can Read 3-DVD SLT1 The Companion Series that Unlocks the Next Level of Your Child's Reading Potential!

Your Baby Can Read® - Receive free shipping and bonus 5-DVD set just for trying!

### Watch the Videos

See what people are saying  
about Your Baby Can Read.



[Lindsey](#)



[Brandy](#)



[Brian](#)



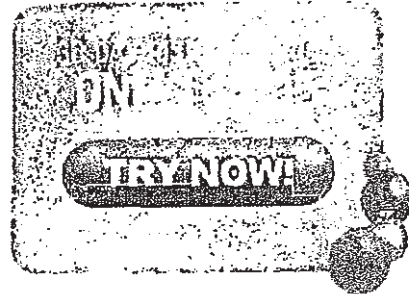
[Kendra](#)



[Angie](#)



[Lori](#)



\*Free Shipping and \$14.95 Trial Offer are only available for orders shipped within the US, Alaska, Hawaii, Canada and AE/AA/AP addresses.

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## EXHIBIT 2



## The Multisensory Method Philosophy | Multisensory Reading and Learning | Teach Baby

Learn more about the Multisensory Method [Visit BrillKids!](#)

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## A Method for Teaching to Read THE MULTISENSORY METHOD

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### Philosophy

Parents naturally make use of multiple sensory stimuli to communicate with their children – something as simple as saying, "That's your nose," and touching your baby's nose is multisensory teaching. Having heard the word "nose" and simultaneously felt her nose touched, your child will find it more likely to remember the word's meaning. Or, you might sing Head, Shoulders, Knees And Toes to your child, while helping her touch each part of her body in turn. Children learn body parts much more rapidly when taught in this way than when they simply hear the words used in context.



No one understands the value of multisensory learning better than infant researcher Robert Titzer. After years spent studying how babies learn, Titzer decided to introduce the written word to his first child, Alexa, in infancy. Having taught Alexa to read some 30 whole words by the age of 9 months, Titzer went on to develop the You Baby Can Read (YBCR) series of books and DVDs. YBCR uses pictures and videos to illustrate the meanings of words, and encourages parents and babies to use their kinesthetic senses. This means, for example, helping your child to touch his toes while he looks at the word "toes," or helping him to raise his arms in the air while he looks at the word "arms up." Babies taught in this way soon learn to perform the actions by themselves.

Titzer believes it is considerably easier to learn to read as a baby or preschooler than it is to start learning in first grade. "There's a natural window of opportunity for learning language, and that window begins at birth and goes through [to] around age four years," he says. "That's when it's easier for a baby to learn second languages, sign language, spoken language, or the written form of language." For more on Robert Titzer and his system for teaching babies to read, go to [Robert Titzer](#).

Method...



### TEACHING YOUR BABY TO READ

Learn more about  
the Multisensory Method  
and how to teach your  
baby to read.  
Visit [www.brillbaby.com](#)  
to learn more.

### YOUR BABY'S PHYSICAL DEVELOPMENT

Learn more about  
the physical development  
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